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10/828,875	04/21/2004	Jeffrey Hallsten	625P	5604
27612	7590	10/04/2007		
AVERILL & VARN 8244 PAINTER AVE. WHITTIER, CA 90602			EXAMINER BEISNER, WILLIAM H	
			ART UNIT	PAPER NUMBER
			1744	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/828,875

Applicant(s)

HALLSTEN, JEFFREY

Examiner

William H. Beisner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-6 and 15 is/are allowed.
- 6) ☒ Claim(s) 7, 8 and 11-14 is/are rejected.
- 7) ☒ Claim(s) 9 and 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 4/19/05.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement filed 4/19/2005 has been considered and made of record.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 11-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 11-14 are indefinite because the meets and bounds of the claims cannot be clearly determined. In view of the current claim language employed in lines 1-9 of claim 11, it is not clearly what structures are considered to be positively recited as the claimed apparatus referred to in claims 12-14. For example, it is not clear if claim 11 is reciting "a modular support system" including the elements that define the system or "a series of flow distribution platform modules" or "a flow distribution platform". Clarification and/or correction is requested.

In claims 12-14, "The apparatus" lacks antecedent basis.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by Hallsten (US 6,255,102).

With respect to claim 7, the reference of Hallsten discloses a modular support system (10) for supporting a bed of filter or compost material (64) through which air or gas is to be passed vertically, with provision for balancing the distribution of gas to be passed through the bed of material, comprising: (a) a multiplicity of polygonal bed platform modules (36,38) having generally planar top surfaces and shaped to be arranged side-by-side contiguously to form a bed platform (40) covering a selected area, at least some of the bed platform modules having perforations (46) so as to allow gas to pass through the bed platform, (b) bed support legs (48) having upper ends connected to bottom sides of the bed platform modules, and of length sufficient to support and elevate the bed platform modules above a base surface on which the support system rests to form a plenum (42) under the bed platform modules, (c) an edge closure (28) along the periphery of the bed platform and generally closing the plenum, (d) a series of flow distribution platform modules (36, 38) comprising some of the bed platform modules (36,38) and being arranged contiguously in the bed platform, defining in the plenum a flow distribution channel space beneath the series of flow distribution platform modules (See column 6, lines 51-58), (e) a gas inlet opening (54) into the plenum and communicating with the flow distribution channel space, and (f) the flow distribution platform modules having adjustable means (74) (See column 6, lines 51-58) for closing, to a desired degree, the flow distribution

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channel space from the rest of the plenum at sides of the flow distribution platform modules, so that gas entering at the inlet opening can be directed as desired to balance the flow of gas throughout the support system.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hallsten (US 6,255,102) in view of Dunbar (US 4,262,584).

The reference of Hallsten has been discussed above.

While the reference of Hallsten discloses the use of adjustable vanes (74) for providing even distribution of air under the bed of material, claim 8 differs by reciting that the vanes can be adjusted from above the modular support system once erected.

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The reference of Dunbar discloses that it is conventional in the art of floor aerators to adjust (open or close) vanes or louvers (57) positioned below the floor either manually or electrically (See column 4, lines 44-60).

In view of this teaching, it would have been obvious to one of ordinary skill in the art to provide manual or electrical structures for controlling the movement of vanes (74) from above the floor as suggested by the reference of Dunbar for the known and expected results of providing a means recognized in the art for controlling the flow of air below the floor once the system has been assembled.

### ***Double Patenting***

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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10. Claim 7 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 6, 7, 28 and 29 of U.S. Patent No. 6,255,102. Although the conflicting claims are not identical, they are not patentably distinct from each other because.

Claim 7 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6, 7, 28 and 29 of U.S. Patent No. 6,255,102. An obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but an examined application claim not is patentably distinct from the reference claim(s) because the examined claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985). Although the conflicting claims are not identical, they are not patentably distinct from each other because Claim 7 is generic to all that is recited in claims 6, 7, 28 and 29 of U.S. Patent No. 6,255,102. That is, claims 6, 7, 28 and 29 of U.S. Patent No. 6,255,102 fall entirely within the scope of claim 7 or, in other words, claims are anticipated by claims 6, 7, 28 and 29 of U.S. Patent No. 6,255,102.

11. Claim 8 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 6, 7, 28 and 29 of U.S. Patent No. 6,255,102 in view of Dunbar (US 4,262,584).

Claims 6, 7, 28 and 29 encompass a device that is substantially the same as that instantly recited in instant claim 8.

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While claims 6, 7, 28 and 29 of U.P. Patent No. 6,255,102 encompass a device that includes adjustable vanes (74) for providing even distribution of air under the bed of material, claim 8 differs by reciting that the vanes can be adjusted from above the modular support system once erected.

The reference of Dunbar discloses that it is conventional in the art of floor aerators to adjust (open or close) vanes or louvers (57) positioned below the floor either manually or electrically (See column 4, lines 44-60).

In view of this teaching, it would have been obvious to one of ordinary skill in the art to provide manual or electrical structures for controlling the movement of vanes from above the floor as suggested by the reference of Dunbar for the known and expected results of providing a means recognized in the art for controlling the flow of air below the floor once the system has been assembled.

***Allowable Subject Matter***

12. Claims 1-6 and 15 are allowed.
13. Claims 9 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
14. Claims 11-14 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.



15. The following is a statement of reasons for the indication of allowable subject matter:

With respect to claims 1-6 and 9-15, while the prior art of record discloses a modular support system for supporting a bed of material that includes distribution platform modules including vanes for directing the flow of gas throughout the support system, wherein the vanes can be adjusted from above the support system once erected, the prior art of record fails to teach or fairly suggest the use of flow distribution platform modules having slots in generally vertical planes near left and right sides of the modules, including slide gates configured to be assembled down into the slots to hang down into the plenum sufficiently to close off the respective sides of the flow distribution channel space to a desired degree at each side of each flow distribution platform module.

### *Conclusion*

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Beisner whose telephone number is 571-272-1269. The examiner can normally be reached on Tues. to Fri. and alt. Mon. from 6:15am to 3:45pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys J. Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/William H. Beisner/  
Primary Examiner  
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WHB